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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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No. 173] NEW DELHI, SATURDAY, AUGUST 30, 1958/BHADRA 8, 1880

ELECTION COMMISSION, INDIA.

NOTIFICATION

New Delhi, the 20th August, 1958/29th Sravana, 1880 ASaka)

S.O. 1784.—Whereas the election of Shri Brij Narayan Brijesh as a member of the House of the People from the Shivpuri constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Babulal Sharma, son of Sawai Lal Sharma, Resident of Shivpuri, District Shivpuri, Madhya Pradesh;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION TRIBUNAL, GWALIOR

ELECTION PETITION No. 287 OF 1957.

BEFORE

V. K. Dongre, M.A.L.L.B., Member, Election Tribunal, Gwalior.

Babulal Sharma S/o Sawailal Sharma, r/o Shivpuri, District Shivpuri—*Petitioner.*

versus,

1. Shree Brij Narayan Brijesh, r/o Gwalior,
2. Shree Shyamlal Pandveeya r/o Morar,
3. Shree Gautam Sharma r/o Lashkar,
4. Bharat Bhushan S/o Prakash Chandra, Baraf Khana, r/o Morar.
5. Kanhaiya Lal Gupta, Advocate, Shivpuri,
6. Shri V. G. Deshpande, Secretary, All India Hindu Maha Sabha, Hindu Sabha Bhawan, New Delhi—*Respondents.*

Shri Shivdayal Shrivastav, counsel—*for the petitioner.*

Messrs Puttupal Dubey and Girdhar Gopal Mangal, counsel—*for respondent No. 1.*

JUDGMENT

1. This is an election petition, under section 80 of the Representation of the People Act, filed by Shri Babulal Sharma, an elector in the Shivpuri Parliamentary Constituency challenging the election of Shri Brij Narayan Brijesh Respondent No. 1, who contested the election on behalf of the Hindu Maha Sabha. Respondent Nos. 2 to 6 have been joined unnecessarily as parties to the petition.

2. The main grounds on which the petitioner seeks to have the election declared void, as stated in the petition are:—

- (1) That respondent No. 3 Shri Gautam Sharma had appointed Dr. Manoharlal Mehta of Shivpuri as his election agent, but he was never authorized to present any notice of withdrawal on behalf of Gautam Sharma. The Returning Officer wrongly accepted the withdrawal of Gautam Sharma, who contested an Assembly seat in the same District and won the election. The exclusion of Shri Gautam Sharma has materially affected the result of the election.
- (2) That about five thousand ballot papers meant for the election of Assembly seats were found in the boxes of Shri Brijesh. They were not rejected by the Returning Officer and were included in the count.
- (3) That Shri Brijesh respondent No. 1 and his supporters made systematic appeal to voters to vote on the ground of caste and creed. Personally respondent No. 1 had been appealing systematically for Brahmin support, he being a brahmin. For non-brahmins he would ask whether they were out to murder (meaning thereby to defeat) a Brahmin, as against a cow killer (meaning a member of Congress, a party which is not banning cow slaughter in the teeth of opposition). His begging votes as a Brahmin in the above fashion, told upon the simple villagers and materially furthered his prospects.

3. Respondent No. 1 has denied these allegations and has stated that the notice of withdrawal was sent by respondent No. 3, himself and Dr. Manoharlal showed the letter of authority, executed by respondent No. 3, to the Returning Officer at the time of presenting the notice of withdrawal. Regarding systematic appeal on the basis of caste and creed the respondent's objection is that the allegations are vague and full particulars as required by section 83(b) of the Representation of the People Act have not been set forth, as such the petitioner should not be allowed to lead evidence on the aforesaid allegations and this clause should be struck off. By application dated 14th November 1957, respondent No. 1 raised an objection that the petitioner has not complied with the mandatory provisions of section 117 of the Representation of the People Act, in as much as he has not deposited Rs. 1000 as per provisions of the said Act; meaning thereby that though the amount was deposited, it was not deposited in favour of the Secretary to the Election Commission.

ISSUES

- (1) Is the verification of the petition defective? If so, what is its effect?
- (2) What is the defect in the prayer clause of the petition and what is its effect?
- (3) Are respondents Nos. 2 to 6 implicated improperly and as such their names should be struck off?
- (4) Is paragraph No. 5 of the petition vague?
- (5) Do the allegations made in para 6 of the petition deserve to be struck off, as full particulars of corrupt practices are not given?
- (6) Did the Returning Officer wrongfully accept the withdrawal of Shri Gautam Sharma, respondent No. 3? If so, is the election void?
- (7) Whether about 5000 ballot papers meant for Assembly seat were found in the boxes of respondent No. 1, which should have been rejected, but were not rejected by the Returning Officer. If it be so, has this fact materially affected the result of the election? Subject to decision of Issue No. 5,
- (8) Whether respondent No. 1 and his supporters made appeals to voters on the ground of caste and creed and were responsible for corrupt practices mentioned in clause (3) of section 123 of the Representation of the People Act? If so, what is the effect on the result of the election?
- (9) Has the petitioner no *locus standi* as he has withdrawn his candidature?
- (10) Is the petition *malafide*?
- (11) Whether the petitioner has complied with the provisions of section 117 of the Representation of the People Act, by depositing the amount of Rs. 1000 of Treasury Challan No. 2096, dated 25th April, 1957, in favour of the Secretary, to the Election Commission?

4. The first ten issues were framed on 30th July, 1957 and 9th August 1957 was fixed for arguments on issues Nos. 1, 2, 3, 4, 5 and 9. An adjournment was given on the request of respondent No. 1 who wanted to have a counsel from Delhi, and 22nd August 1957 was fixed. On that day the petitioner gave an application for amendment of the petition, under section 90 (clause 1 and 5) of the Representation of the People Act, which was disallowed by order dated 24th September, 1957. The petitioner filed a petition in the Hon'ble High Court, under articles 226 and 227 of the Constitution, which was allowed and this Tribunal was ordered to consider the application for amendment, taking into consideration the rules regarding amendment of pleadings, as envisaged by Their Lordships of the Supreme Court

in *Harish Chandra Vs. Triloki Singh* (A.I.R. 1957 S.C. 444). Accordingly the application filed on 22nd August, 1957 for the amendment of para 6 of the petition, was reheard on 8th February 1958 and the petitioner's application for amendment was finally disallowed by order dated 18th February, 1958.

Issues Nos. 1, 2, 3, 4, 5 and 9 have been decided by order dated 12th October, 1957 (Annexure A). In view of the decision of issue No. 5, issue No. 8 has been deleted, so it is only issues Nos. 6, 7, 10 and 11, which are to be considered now.

FINDINGS

Issue No. 6—No.

Issue No. 7—No.

Issue No. 10—No.

Issue No. 11—Yes.

REASONS FOR THE FINDINGS

5. *Issue No. 6.*—The contention of the learned counsel for the petitioner is that though the form of withdrawal Ex. D. 3 signed by Gautam Sharma has been presented to the Returning Officer by his election agent Dr. Manoharlal Mehta, he was not authorized in writing in this behalf by Gautam Sharma; and the alleged authority letter Ex. P. 1, was not signed by Gautam Sharma, nor was he in any way responsible for that letter. According to the learned counsel for the petitioner as the withdrawal form was not accompanied by any letter of authority in favour of the election agent, Dr. Manoharlal Mehta, it could not be acted upon, as such the action of the Returning Officer in omitting Shri Gautam Sharma from the list of contesting candidates, published under section 38 of the R.P. Act was wrong.

6. Section 37 (1) of the R.P. Act which provides for the withdrawal of candidates is as follows:—

“Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before 3. O'clock in the afternoon, on the day fixed under clause (c) of section 30 to the Returning Officer, either by such candidate in person or by his proposer or election agent, who has been authorized in this behalf in writing by such candidate.”

Sub-section (3) of this section provides that the Returning Officer shall, on receiving a notice of withdrawal under sub-section (1) as soon as may be thereafter, cause a notice of the withdrawal to be affixed, in some conspicuous place in his office.

7. From section 37 (i) it is clear that when a notice of withdrawal is presented by the election agent, he must have an authority in this behalf in writing, by such candidate.

8. On behalf of respondent No. 1 it is contended that Gautam Sharma had authorized Dr. Manoharlal Mehta, his election agent to present the notice of withdrawal, by Ex. P. 1 as such there is a full compliance of section 37 (i) of the R.P. Act.

9. The petitioner has examined Shri Gautam Sharma P.W. 6 and Dr. Manoharlal Mehta in this connection. Shri Gautam Sharma has deposed that he himself did not withdraw his candidature by presenting the withdrawal form to the Returning Officer. He also did not give the withdrawal form or any authority to withdraw to his election agent Dr. Mehta. After looking into Ex. P. 1 the witness has said that the signature on it appears to be like his signature, but the contents of the letter are not in his handwriting; he never wrote any such letter of authority and he does not remember having signed this letter. In cross examination the witness has admitted that the amount of deposit mentioned in Ex. P. 1 has been withdrawn, and after deducting Rs. 250/300, which were due to Dr. Mehta, the balance of deposit was received by him. He never complained to any Election Officer that his nomination paper was withdrawn without his authority; and he also did not take any proceedings against Dr. Mehta for presenting his withdrawal form without his authority. The witness has admitted his signatures of Ex. D. 1, D. 2 and D. 3. Regarding the withdrawal form Ex. D. 3 the witness has said that he did not know who presented it to the Returning Officer. In his re-examination the witness has said that he did not give or send Ex. D. 3 to Dr. Mehta, but he had sent it to his election office in Karcra, with a view, that after receiving the Congress decision he would send it with authority, and he did not know how it reached Dr. Mehta.

10. This explanation appears to be somewhat strange. If Gautam Sharma wanted to withdraw from the Shivpuri Parliamentary Constituency, after the decision of the Congress High Command; and for that purpose he had also kept ready the withdrawal form Ex. D. 3, duly signed, the natural course for him was that he should have also written an authority letter in favour of the person through whom he wanted to have it presented before Returning Officer. From the reply in re-examination by the witness, it is clear that

he did not intend to present the withdrawal form himself; as he has said that he intended to send authority letter after the decision of the Congress in the matter. Besides this, if he himself wanted to present the withdrawal form there was no sense in keeping it ready beforehand.

11. On a comparison of Ex. D. 2 (appointment of election agent), Ex. D. & (withdrawal form) and Ex. P. 1 (letter of authority) it is quite clear that the contents of all these three documents are written by one and the same man, in the same ink. Similarly on comparison, the signatures of Gautam Sharma on these documents appear to be quite similar, so much so, that even Gautam Sharma has said that the signature on Ex. P. 1 appears to be like his, and his election agent Dr. Manohar Lal Mehta P.W. 7, has definitely said in cross-examination that the signature on Ex. P. 1 was of Gautam Sharma, though in re-examination he has tried to explain by saying that he had said so because the two signatures were similar. All the same, the fact that Shri Gautam Sharma himself and his election agent Dr. Mehta, who according to him has been in Congress from 1946 and as such must be well acquainted with the handwriting of Gautam Sharma, who had been holding important posts in the Congress organization, could not find any fault with the signature on Ex. P. 1 could not be easily ignored.

12. Dr. Manoharlal Mehta has stated that he presented Ex. D. 2 and Ex. D. 3 to the Collector (Returning Officer) and besides these two papers he did not present any other paper to the Returning Officer on that day. Ex. D. 3 was brought to him by some Congress worker from Karera, and he did not bring any letter of Gautam Sharma alongwith it. He has further said that as election agent he did only two things for Gautam Sharma *viz.* presenting Ex. D. 2 and withdrawing Rs. 500. According to him he got this amount within a day or two of the publication of notice of withdrawal, but from the statement of Baldeo Prasad D.W. 10 and Ex. D. 5, (entry in Cash Book) it is clear that the amount of Rs. 500 was paid to Dr. Manoharlal on 4th February 1957. The learned counsel for the petitioner has contended that though Baldeo Prasad has stated in his examination-in-chief that Ex. D. 7 bears the signature of Manoharlal Mehta, in cross-examination he has admitted that Ex. D. 7 really bears the signature of Mr. Kanhyalal Gupta. Ex. D. 5 and Ex. P. 1 have voucher number 13 written on them. It is true that Ex. D. 7 bears voucher No. 13 and is signed by Kanhyalal Gupta, but just below the signatures of the payee, the address of payee is written as Gautam Sharma. The voucher No. 13/4-257 on Ex. P. 1 is written by this witness. In Ex. P. 5 (Cash Book entry) there is a reference to voucher No. 13. Ex. D. 6 is another payee's voucher having No. 6, dated 4th February 1957. It is also for security deposit of Rs. 500. The payee's name on it is written as Kanhayalal Gupta, but the payee's signature appears to be M. K. Mehta (Manohar Lal Krishna Vallabh Mehta P.W. 7). Considering Ex. D. 6 and D. 7 together it appears that Dr. Manoharlal Mehta has been paid Rs. 500 on 4th February 1957, and Sri Kanhyalal Gupta, who was also a candidate and had withdrawn on 4th February 1957 (*vide* Ex. D. 4) took his security deposit of Rs. 500: on the same day, the payee's vouchers were prepared for both Dr. Mehta and Sri Kanhyalal but by inadvertence both of them signed the payee's voucher meant for the other. Taking into consideration Ex. D. 5, D. 6 and D. 7 together, I have no doubt in my mind that Dr. Manoharlal received Rs. 500 on 4th February 1957. This payment of Rs. 500 to Dr. Manoharlal Mehta for Gautam Sharma on 4th February 1957 clearly leads to a conclusion that Ex. P. 1 which is an authority for withdrawal of candidature and refund of Rs. 500, to Manohar Lal Mehta was presented to the Returning Officer on 4th February 1957.

13. Mr. Jiwan Mal Kochar D.W. 9 was the Returning Officer for Shilvpur Parliamentary Constituency. He has stated that Ex. D. 2 and D. 3 were presented to him and he has put his signatures on them dated 4th February 1957. Ex. P. 1 was also presented to him and the order A to A is written in his hand and it bears his signature dated 4th February 1957. On the basis of Ex. D. 3 and P. 1 he held that Gautam Sharma had withdrawn. From the cross-examination of Mr. Kochar it appears that he was aware of the provisions of section 37(i) of the R.P. Act that an election agent, presenting a withdrawal form of a candidate must have an authority in this behalf in writing by the candidate; as such I do not think that Mr. Kochar would have accepted the withdrawal form Ex. D. 3 without any such authority and entered the name of Gautam Sharma in the list of withdrawn candidates. From Ex. D. 4 (notice of withdrawal of candidature) it appears that according to the provisions of section 37(3) and Rule 9, a notice was published on 4th February 1957, in which Gautam Sharma's name was there. On the publication of this notice, it was open to any body interested in Gautam Sharma, to raise an objection that his withdrawal form was not accompanied by a letter of authority under section 37(i) of the R.P. Act. Nothing like this was done at the proper time. The order and signature of the Returning Officer alongwith date 4th February 1957 on Ex. P. 1 clearly show that Ex. P. 1 was presented to the Returning Officer on 4th February 1957, the day on which the withdrawal form was presented. Regarding the date 4th February 1957 put by Mr. Kochar an order A to A on Ex. P. 1 it is suggested by the learned counsel for the petitioner that in rush of work it was possible to obtain anti dated signature and orders. He has also said that Mr. Kochar has written his orders on Ex. D. 2, D. 3 in Hindi, whereas his order on Ex. P. 1 is written

in English, which shows that Ex. D. 3 and P. 1 were not presented together. I do not think that a responsible officer of Mr. Kochar's status would be a party to a fraud by subscribing anti dated signature or he be duped by the staff of his office. A man knowing both Hindi and English could switch over from one to the other unconsciously, so no inference regarding time and date could be drawn from the fact that the orders on D. 2, D. 3 are in Hindi and the one on Ex. P. 1 is in English. Mr. Kochar's signatures on all these three papers are in English. Besides this the order by Mr. Kochar on Ex. P. 1 is for refunding the amount; and Cash Book entry Ex. D. 5 and payee's voucher show that the amount was refunded on 4th February 1957. Thus on a careful consideration of the above evidence it is difficult even to imagine that Ex. P. 1 was prepared after the election petition was filed and the written statement of respondent No. 1 had come in.

14. Shri Babulal Sharma, the petitioner has no personal knowledge as to what happened before the Returning Officer on 4th February 1957. He has stated that he asked for certain copies by his application Ex. P. 5; but he did not get copy of item No. 4, viz. the letter of authority, authorizing Shri Manohar Lal Mehta to present the notice of withdrawal and he was orally told that the said paper was not on record. Baldeo Prasad D.W. 10 has explained the situation by saying that Ex. P. 1 being an authority letter for refund of money also was filed in the voucher's file. Mahendra Sahai P.W. 8 has also said that Ex. P. 1 was in accounts file and was transferred to the file of nomination paper of Gautam Sharma on 21st November 1957. The mere fact that Ex. P. 1 was not available on a particular day, when Shri Babulal asked for its copy, could not safely lead to a definite conclusion, that it was not presented on 4th February 1957 and was introduced later on.

15. Laxmi Narayan D.W. 1 was Hindu Sabha candidate for Pichore Shivpuri Assembly Constituency. He has stated that Dr. Manoharlal Mehta presented the withdrawal form of Gautam Sharma, to the Collector Shri Jiwan Kishore Kochar. This form was accompanied by two more papers—(1) Agent-patra, (2) an authority letter for withdrawal of nomination paper and refund of Rs. 500. Those papers were Ex. D. 3, D. 2 and Ex. P. 1. In cross-examination he has said that Dr. Mehta presented these papers on 4th February 1957 after 12 Noon. The time entered in Ex. D. 3 by the Returning Officer is 11.55 A.M. There is nothing in the cross-examination of this witness which could be a ground to disbelieve him. It is said by the learned counsel for the petitioner that this witness was a candidate for election on behalf of Hindu Mahasabha, so it was natural that he should depose in favour of respondent No. 1 who is a Hindu Sabha candidate. If this principle is accepted, by analogy it follows that Shri Gautam Sharma and Dr. Manoharlal's statement could also not be believed as both of them appear to be congressites of long standing and as such they are expected to help respondent No. 2, who was a congress candidate or at least do something which could be helpful in unseating the Hindu Sabha candidate, respondent No. 1.

16. Shri Banmali Dwivedi D.W. 11 is Handwriting Expert of twenty years experience. He has examined Ex. P. 1 using as standard Gautam Sharma's signatures on Ex. D. 1, D. 2, D. 3 and his three signatures taken on 3rd March 1958 marked X and he is of opinion that the signatures on Ex. P. 1, Ex. D. 1, D. 2, D. 3, and signatures dated 3rd March 1958 marked X are of one and the same person. The learned counsel for the petitioner has drawn my attention to certain portions of the cross-examination of the witness to show his lack of knowledge of the subject. He has further tried to show by comparison of the disputed and standard signatures some differences in the two sets. It is true that some glaring differences are found in the two sets. The witness has called these differences as normal and natural variations. Though the witness has not stood well in the cross-examination, considering the other evidence on record and the conduct of Gautam Sharma, and the way in which he has deposed about his signature on Ex. P. 1, I am of the view that the opinion of Shri Banmali Dwivedi cannot be ignored. It is significant to note here that though the petitioner's stand is that Gautam Sharma did not sign Ex. P. 1, the petitioner himself did not produce a handwriting expert, though the burden of proof of the issue was on him, but he only wants to take advantage of the defects in the cross-examination of the handwriting expert produced by respondent.

17. The statements of Gautam Sharma and Manoharlal Mehta about the signatures of Gautam Sharma on Ex. P. 1 are not definite. As against this from Shri Banmali Dwivedi's evidence, it is found that Ex. P. 1 is signed by Gautam Sharma. It is proved beyond doubt that Ex. P. 1 was presented to the Returning Officer on 4th February 1957 and it was acted upon by refund of deposit Rs. 500 to Dr. Manoharlal Mehta on the same day. Laxmichand D.W. 1 has stated that Ex. P. 1, D. 2 were presented by Dr. Mehta to the Returning Officer along with Ex. D. 3 on 4th February 1957. The conduct of Shri Gautam Sharma is also significant. He admits that he had kept this withdrawal form Ex. D. 3 written beforehand in his election office Karera, but according to him, he did not write the authority letter though he was aware that mere writing of withdrawal form was of no use, without authority letter. Mr. Gautam Sharma even received his share in the amount of Rs. 500 withdrawn on the basis of Ex. P. 1 and did not complain about the irregularities and injustice done to him by acceptance of his withdrawal without his authority to anybody. The Madhya Pradesh High Court, in First Appeal No. 129 of 1957, Her Highness Maharani Vijaya Raje

Scindia Vs. Motilal S/o Jugalkishore, in which a somewhat similar point was involved, has laid stress on the fact of the acquiescence in the act of the unauthorized agent by the candidate, by his conduct. In that case it was found that the candidate concerned had for all intents and purposes wanted to withdraw. He withdrew his security deposit, and did not raise any protest, as such though there was a breach of provisions of law, the Hon'ble High Court held that the election could not be held void. In the instant case, Gautam Sharma has followed the same course and he actually contested the election for Karera Assembly seat and won it. After a careful consideration of evidence produced by both parties and the conduct of Gautam Sharma, I am definitely of opinion that the notice of withdrawal Ex. D. 3 and authority letter Ex. P. 1 were presented to the Returning Officer on 4th February 1957, the authority letter was not a forgery and was signed by Gautam Sharma, as such there has been full compliance of section 37(1) of the R.P. Act, hence there was nothing wrong in the Returning Officer accepting his withdrawal, hence issue No. 6 is decided against the petitioner.

18. *Issue No. 7.*—The petitioner, has merely mentioned in the petition that 500 ballots meant for Assembly seats were found in the boxes for Shri Brijesh. He has carefully avoided to mention whether this irregularity or defect had been condoned or not by the Election Commission under proviso to Sub-Rule 2 of the Rule 57 of the Rules made under the R. P. Act. Though the petitioner called a full truck load of election records, the only evidence on this issue is that of Mahendra Sahai P.W. 8 who is Electoral Registration Supervisor, but it does not help the petitioner. He has stated that the colour of ballot papers for the Parliament was green, and that for the Assembly (Vidhan Sabha) was red. On three Polling Stations viz. Sallia Pawar (No. 23), Jigna (No. 22), and Gudar (No. 43) ballot papers meant for Assembly seat were issued for Parliamentary seat and *vice versa*. This irregularity in respect of Jigna and Gudar was condoned by the Election Commission, the relevant telegrams are Ex. P. 2, P. 3. The order of the Election Commission in respect of Sallia Pawar was not found in the record. Shri Brijnarayan Brijesh secured 92646 votes, whereas the next candidate Shri Shyam Lal Pandviya secured 80967, the relevant statement is Ex. P. 4. There is thus a difference of 11679 votes. In cross examination the witness has stated that in the above mentioned three Polling Stations Sri Pandviya got in all 459 votes whereas Sri Brijesh got 462. Thus it is found that both parties were on equal footing so far as the irregularity of wrong ballot papers was concerned and the irregularity about the ballot papers regarding two Polling Stations was condoned by the Election Commission under Rule 57(2); and on the three Polling Stations complained of Sri Brijesh had secured 3 votes more than Sri Pandviya. The total difference in the votes polled by Sri Brijesh and Sri Pandviya being 11679, these three votes or even the figure 5000 given by the petitioner could not have materially affected the result of the election, hence issue No. 7 is decided against the petitioner.

19. *Issue No. 10.*—The contention of the learned counsel for respondent No. 1 is that Sri Babulal petitioner, according to his own statement had stood as a candidate on behalf of Bhartiya Jansangh, but he withdrew and after his withdrawal Bhartiya Jansangh had no interest in the election, hence the petition is not bonafide, but is meant in the interest of some body else. According to section 81(i) R.P. Act an election petition could be filed by any candidate or any elector. By withdrawing his candidature Shri Babulal did not cease to be an elector. As there are no conditions laid down in section 81(i) R.P. Act, as to when an elector could or could not file an election petition, no presumption regarding bonafides or otherwise could be drawn from the mere fact that the petitioner had withdrawn his candidature. Thus Issue No. 10 is decided against respondent No. 1.

20. *Issue No. 11.*—The petitioner has filed Treasury Challan No. 2096, dated 25th April 1957, for Rs. 1,000 alongwith his petition. The particulars of remittance given in this challan are:—"On account of security deposit for election petition Shivpuri Parliamentary Constituency." The objection made on behalf of respondent No. 1 is that this deposit of Rs. 1,000 has not been made in the Government Treasury "in favour of the Secretary to the Election Commission", as is required by section 117 of the R.P. Act; and as the petitioner has not literally complied with the words of section 117, the petition should be dismissed under section 90(3) of the Act. The petitioner has led evidence to show that whatever may be the contents of the Treasury Challan the amount has really been paid in favour of the Secretary to the Election Commission. The witnesses are Harbanslal Sharma P.W. 10, Rameshwar Das Gupta P.W. 11 and S. C. Roy P.W. 12. They were examined on Commission. Harbanslal is a clerk of the State Bank of India, Chandni Chowk Delhi, and has produced a true copy of Government credit scroll, Revenue Deposits, Scroll item No. 17, dated 25th April 1957. (Ex. C.W. 1). Rameshwar Das Gupta P.W. 11 is Revenue Deposit Clerk in Delhi Treasury. He has stated that the amount of Rs. 1,000 was deposited by Shri Babulal Sharma as security deposit for election petition Shivpuri Parliamentary Constituency, under the head 'Revenue Deposit'. The duplicate copy of challan was received by the Treasury Officer from the State Bank of India. This amount of Rs. 1,000 was entered at serial No. 1002 on 25th April 1957, under the head 'Revenue Deposit' in the Register of Revenue Deposits. All deposits made as security for costs in connection with election petition are entered in this Register and there is no separate

account in the name of the Secretary to the Election Commission in, the Treasury. The original challan is given to the depositor, the duplicate is retained by the Treasury and the triplicate is forwarded to the Secretary, Election Commission. He has further stated that the amount cannot be withdrawn or refunded unless the competent authority, in this case, the Secretary Election Commission, so directs. Shri S. C. Roy P.W. 12 is the Secretary to the Election Commission. He has stated that a deposit of Rs. 1,000 was made by Shri Babulal on 25th April 1957. There was no separate account in the State Treasury, in the name of the Secretary to the Election Commission. There is only one register containing the entries of deposits of security for costs under section 117 of the R.P. Act and the witness gave his statement from that register; the relevant extract of the entry is C.W. 8/A. The witness has further stated that he is the Controlling Officer in respect of that account and no refund could be made out of that deposit, without his authority or his delegated authority. The above evidence clearly shows that the amount of Rs. 1,000 deposited by the petitioner on 25th April 1957 is in the treasury to the credit of the Election Commission and it could not be withdrawn and refunded without the directions of the Secretary to the Election Commission. Thus this amount is under the full control of the Secretary to the Election Commission. The main purpose of section 117 R.P. Act is to safeguard the costs of the opposite party, hence what is to be seen is whether the amount required to be paid under section 117 of the R.P. Act has really been deposited to the credit of the Election Commission. Taking into consideration the evidence produced, I am of the opinion that in the present case, in spite of the somewhat defective entry in the treasury challan, the petitioner has substantially complied with section 117 of the R.P. Act.

21. There is no unanimity of opinion regarding the interpretation of section 117 of the R.P. Act. In cases reported in A.I.R. 1958 Patna 287 and 306 the Patna High Court has taken a strict view. In the first case, the words used were "For filing election petition for Domrawan Estate Assembly Constituency," and in the second case the only mistake was that in place of the word 'Secretary' word 'Security' was written in the challan; and it has been held that there has been a failure of compliance of section 117 of the R.P. Act. In the case reported in A.I.R. 1958 Madras 261, the petitioner instead of using the exact words like 'in favour of the Secretary to the Election Commission' had used words generally, as security for costs of the election petition, the High Court has held that notwithstanding the absence of the name of the Secretary to the Commission in the receipt the amount having regard to the other entries in the receipt was treated as a credit to the Election Commission and was available to the respondent in the election petition, under the circumstances the terms of section 117 R.P. Act were complied with.

22. Two decisions of the Madhya Pradesh High Court are available on the point *viz.* 1958 Jabalpur Law Reporter 281, Muti Ahmad Jafri *Vs.* Virendra Singh; and page 307, Shrivprasad *Vs.* Chandrika Prasad. In the first case the error made was that instead of the words 'Secretary Election Commission' the words used were 'Secretary Election Petition'; and the Hon'ble High Court has held that what the law contemplates is not that a clumsy blundering or some grammatical or spelling mistake cannot be excused, but that there should not be a breach of section 117. In the second case, instead of writing "in favour of the Secretary to the Election Commission" the petitioner wrote the challan as follows:—

"Security deposit for election petition of Bargi Assembly Constituency No. 97 district Jabalpur, Madhya Pradesh. Refundable by order of the Election Commission of India New Delhi."

The Hon'ble High Court has held that the omission to deposit the money in the name of the Secretary to the Election Commission was not fatal to the petition, so long as the money required by the other provisions of the law was available for the purpose for which the deposit was made. In my opinion, this case fully applied to the present case, as it has been found that the amount is in deposit to the credit of the Secretary to the Election Commission; and completely at his disposal. I, therefore, hold that the petitioner has substantially complied with the provisions of section 117 of the R.P. Act and decide issue No. 11 in favour of the petitioner.

23. In view of the findings arrived at above, on the issues framed, I find no substance in this election petition and therefore dismiss it. The petitioner shall bear his costs and shall pay to respondent No. 1, Shri Brijnarayan Brijesh by way of costs Rs. 600 including counsel's fee Rs. 300.

The 30th July 1958.

(Sd.) V. K. DONCRE,

Member,
Election Tribunal, Gwalior.

ANNEXURE A

ELECTION TRIBUNAL, GWALIOR

ELECTION PETITION No. 287 OF 1957

Babulal Sharma—*Petitioner.**Versus*Brijnarayan Brijesh & 5 others—*Respondents.*

ORDER

At present the following six preliminary issues are to be decided:—

- (1) Is the verification of the petition defective. If so, what is the effect?
- (2) What is the defect in the prayer clause of the petition—and what is its effect?
- (3) Are respondent Nos. 2 to 6 impleaded improperly; and as such their names should be struck off?
- (4) Is paragraph No. 5 of the petition vague?
- (5) Do the allegations made in para 6 of the petition deserve to be struck off; as full particulars of corrupt practices are not given?
- (6) Has the petitioner no *locus standi*, as he has withdrawn his candidature?

Issue No. 1.—After this issue was framed, the petitioner in compliance with order dated 24th September 1957, has amended the verification. Regarding the amended verification the respondent No. 1's learned counsel has two objections *viz.*, that the petitioner has mentioned paragraphs 6A, 6B and 6C in the amended verification, which are not in the petition and that the date and place of amendment are not written. Regarding the first objection the fact is that in the amended verification of the petition on record, there is no mention of paras 6A, 6B and 6C, though they appear to have been mentioned in the copy supplied to respondent No. 1; as such the objection regarding paras 6A, 6B and 6C has no material effect.

In the amended verification the date of amendment is written as 24th September 1957 when the amendment was made, and as the amendment has been made by the petitioner's counsel, before the Tribunal, at Gwalior, the omission to mention the place where amendment has been made has no significance. Hence issue No. 1 is decided against respondent.

Issue No. 2.—The objection of respondent No. 1 is to the words 'The petitioner may kindly be granted such other relief as may be deemed lawful, proper and just' in para 3 of the petition. The petitioner's main claim is for a declaration that the election of respondent No. 1 be declared void. He has not asked for relief under section 84 of the Act. The words objected to by respondent No. 1, cannot be called a prayer for relief under section 84 of the Act. To my mind, adding a general prayer like this, has no effect so far as the maintainability of the petition is concerned; hence I decide issue No. 2 against respondent.

Issue No. 3.—The petitioner's prayer is that the election of respondent No. 1 be declared void. He has not prayed for relief under section 84 of the Act that he himself or any other candidate be declared duly elected. As such according to section 82(a) of the Act, only respondent No. 1 is a necessary party and respondent No. 2 to 6 are unnecessarily joined as respondents. The question is though respondent Nos. 2 to 6 are improperly impleaded, is it necessary to strike off their names? It is only respondent No. 2 who has filed a written statement and wants to continue as respondent.

According to section 90(4) of the Act any candidate not already a respondent is entitled to be joined as a respondent upon an application by him to the Tribunal, within fourteen days from the date of the commencement of trial. Thus if the petitioner had not joined respondent No. 2, Shri Shyamlal Pandviya, as respondent, he could have made an application under section 90(4) to be joined as respondent. As the petitioner, whether it was necessary or unnecessary, had already made Shri Pandviya a respondent, he did not and could not move under section 90(4) of the Act, under the circumstances his name cannot now be struck out from the list of respondents. As the other four respondent Nos. 3 to 6 are not contesting the petition, no order regarding striking off their names is necessary. Issue No. 3 is decided accordingly.

Issue No. 4.—In paragraph No. 5 the petitioner has said that about 5,000 ballot papers meant for the election of Assembly seat, were found in the boxes of Shri Brijesh, which ought to have been rejected under Rule 57(2) (d) and (e). In short the objection of the petitioner is that ballot papers for Assembly seat were found in Shri Brijesh's boxes, which were for Parliamentary seat, as such those ballot papers should have been rejected.

The proviso to Rule 57, clearly says that the Election Commission can direct that the defects mentioned in (d) and (e) of the Rule, could be overlooked and ballot papers shall not be rejected merely on the ground of such defect. The question is, if the ballot papers for Assembly seat were found in boxes for Parliamentary seat, was any direction given by the Election Commission in respect of such ballot papers, and on whom the burden will lie to show that such direction was issued. Mr. Dubey the learned counsel for respondent No. 1, contends that the petitioner should have stated that no such direction was issued by the Election Commission or that the use of ballot papers for Assembly seat was authorized for Parliamentary seat. I think it was not necessary for the petitioner to do so; and as such the allegations in para 5 cannot be called vague; hence issue No. 4 is decided against respondent No. 1.

Issue No. 5.—After this issue was framed, the petitioner applied for the amendment of para 6 of the petition and the amendment sought for was disallowed by order dated 24th September 1957. Now the question is whether the paragraph should be struck off, as full particulars of corrupt practices mentioned in it are not given in accordance with section 83(1) (b) of the Act. Mr. Puttubal Dubey's contention is that if this paragraph is not struck out and evidence is allowed in respect of allegations made in it, the provisions of section 83(1) (b) of the Act are rendered nugatory. Mr. Shivdayal, appearing for the petitioner, has contended that as no penalty is attached to the non-compliance of section 83, paragraph 6 cannot be struck out for non-compliance of section 83(1) (b). Mr. Puttubal Dubey has cited cases reported in Election Law Reports, Vol. 3 pages 280; and 358, Vol. 4, pages 380; and 467. Vol. 8 page 240; Dehra Doon Election Cases Vol. II, page 295, which are to the effect that full particulars of corrupt practices must be given, and if they are not given, allegations which are made to make a fishing inquiry and to introduce such kind of evidence, as may be available at the time of hearing must be struck out; and the petitioner should not be allowed to lead evidence in respect of them. Mr. Shivdayal the learned counsel for the petitioner has said that the above mentioned cases relate to the state of law before the amended R. P. Act. His contention is that if sufficient particulars are not given by the petitioner, he could be asked to give particulars; (in fact the petitioner had moved for amendment to give particulars) and without doing so paragraph No. 6 cannot be struck out. In his support he was cited A.I.R. 1954 Supreme Court 210, 1955 Supreme Court 610, 1957 Supreme Court 444. The above mentioned cases also relate to the time, when section 83 of the Act was not amended. After the amendment sub-section (3) of section 83 is deleted, and in section 90(3) there is no power given to the Tribunal for ordering the petitioner to furnish further and better particulars in regard to any matter referred to therein. This matter has already been dealt with by me in my order dated 24th September 1957.

Mr. Shivdayal has contended that there is no penalty attached to the non-compliance of section 83(1) (b) as is attached to the non-compliance of section 81, 82 and 117, under section 90 (3) of the Act. I do not think that section 83(1) (b) is without any purpose, and could be safely ignored. The non-inclusion of section 83 in section 90(3) could only mean that the petition could not be dismissed on this ground; but it does not follow that any vague allegation, could not also be struck out. After a careful consideration of the matter and taking into consideration the fact that the petitioner's application for amendment of para 6 of the petition has been disallowed, I am of opinion that as para 6 of the petition does not contain full particulars as required by section 83(1) (b) of the Act, the allegations made in it cannot be inquired into; hence I order that para No. 6 of the petition be struck out. Issue No. 5 is decided accordingly.

Issue No. 6.—The learned counsel for respondent No. 1 did not press this issue. The petitioner is an elector in Shivpuri Parliamentary Constituency. According to section 81(1) of the Act, any candidate at the election of any elector could call in question an election, by presenting an election petition. Even if the petitioner had withdrawn his candidature, he did not cease to be an elector; as such he could present this election petition, hence this issue is decided against the respondent.

In view of the decision of issue No. 5 issue No. 8 is deleted.

(Sd.) V. K. DONGRE,

Member,
Election Tribunal, Gwalior.

The 12th October, 1957.

[No. 82/287/57.]

A. N. SEN, Under Secy.

